

SENATE No. 1746

The Commonwealth of Massachusetts

PRESENTED BY:

Mark C. Montigny

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relating to crimes against elders and people with disabilities

PETITION OF:

NAME:

Montigny, Mark (SEN)

DISTRICT/ADDRESS:

Second Bristol and Plymouth

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. S00950 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATING TO CRIMES AGAINST ELDERS AND PEOPLE WITH DISABILITIES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 111 of the General Laws, as appearing in the 2004 Official
2 Edition, is hereby amended by striking section 72K and inserting in place thereof the following:-

3 Section 72K. (a) As used in this section, the following words shall, unless the context clearly
4 requires otherwise, have the following meanings:-

5 ‘Bodily injury’, substantial impairment of the physical condition including, but not limited to,
6 any burn, fracture of any bone, subdural hematoma, injury to any internal organ, or any injury
7 which occurs as the result of repeated harm to any bodily function or organ, including human
8 skin.

9 ‘Serious bodily injury’, bodily injury which results in a permanent disfigurement, protracted loss
10 or impairment of a bodily function, limb or organ, or substantial risk of death.

11 'Sexual assault', a violation or attempt to commit a violation of section 13B, section 13F, section
12 13H, section 22, section 22A, section 24, or section 24B of chapter 265 or section 3 of chapter
13 272.

14 (b) The attorney general may file a civil action against a person who commits abuse,
15 mistreatment or neglect of a patient or resident or who misappropriates patient or resident
16 property, or against a person who wantonly or recklessly permits or causes another to commit
17 abuse, mistreatment or neglect of a patient or resident or misappropriate patient or resident
18 property. The civil penalty for such abuse, mistreatment, neglect or misappropriation shall not
19 exceed: \$5,000 if no bodily injury results; \$10,000 if bodily injury results; \$20,000 if sexual
20 assault or serious bodily injury results; and \$50,000 if death results. Section 60B of chapter 231
21 shall not apply to an action brought by the attorney general pursuant to this section. Nothing in
22 this section shall preclude the filing of any action brought by the attorney general or a private
23 party pursuant to chapter 93A or any action by the department pursuant to this chapter.

24 SECTION 2. Section 13H of Chapter 265 of the General Laws, as appearing in the 2002
25 official edition, is hereby amended by adding at the end thereof the following:-

26 Whoever commits an indecent assault and battery on an elder or person with disability, as
27 defined in section 13K, shall be punished by imprisonment in the state prison for not more than
28 10 years, or by imprisonment in the house of correction for not more than 2 1/2 years, and
29 whoever commits a second or subsequent such offense shall be punished by imprisonment in the
30 state prison for not more than 20 years; provided, however, that a prosecution commenced under
31 this section shall not be placed on file or continued without a finding.

SECTION 3. Paragraph (a) of section 13K of said Chapter 265, as so appearing, is hereby amended by inserting after the word ‘meanings:—,’ in line 3, the following definition:—

‘Abuse’ physical contact which either harms or creates a substantial likelihood of harm.

SECTION 4. Paragraph (a) of section 13K of Chapter 265, as so appearing, is hereby further amended by amending the definition of ‘Caretaker’ as so appearing by amending the phrase ‘physical care’ as it so appears in the first sentence of said definition by deleting the word ‘physical’ and by further amending said phrase ‘physical care’ as it so appears in sub-paragraphs (i), (iii) and (iv) of said definition by deleting the word ‘physical’.

SECTION 5. Said paragraph (a) of section 13K of said Chapter 265, as so appearing, is hereby further amended by inserting after the definition of ‘Caretaker’ the following 2 definitions:—

‘Mistreatment’, the use of medications or treatments, isolation, or physical or chemical restraints which harm or creates a substantial likelihood of harm.

‘Neglect’, the failure to provide treatment or services necessary to maintain the health and safety and which either harms or creates a substantial likelihood of harm.

SECTION 6. Said paragraph (a) of section 13K of said Chapter 265, as so appearing, is hereby further amended deleting the definition “person with a disability” as so appearing, and inserting in place thereof the following:-

‘Person with disability,’ a person with a permanent or long-term physical or mental impairment that prevents or restricts the individual’s ability to provide for his or her own care or protection.

SECTION 7. Said section 13K of said Chapter 265, as so appearing, is hereby further amended by inserting after the definition of ‘Serious bodily injury’ and before paragraph (b) the following language:-

(b) Whoever commits an assault and battery upon an elder or person with a disability shall be punished by imprisonment in the state prison for not more than three years or by imprisonment in a house of correction for not more than two and one-half years, or by a fine of not more than \$1,000, or both such fine and imprisonment.

Said section 13 K of said chapter 265, as so appearing, is hereby further amended as follows:

By renumbering paragraph (b) as it now appears as paragraph (c) and renumbering paragraph (c) as it now appears as paragraph (d) and by inserting the following language after the renumbered paragraph (d):-

(e) Whoever, being a caretaker of an elder or person with a disability, wantonly or recklessly commits or permits another to commit abuse, neglect or mistreatment upon such elder or person with a disability, shall be punished by imprisonment in the state prison for not more than three years, or imprisonment in the house of correction for not more than 2½ years, or by a fine of not more than \$5,000, or by both such fine and imprisonment.

Said section 13K of Chapter 265, as so appearing, is hereby further amended as follows:

By renumbering paragraph (d) as it now appears as paragraph (f) and renumbering paragraph (f) as it now appears as paragraph (h).

SECTION 8. Said Chapter 265 is hereby further amended by striking out section 38.